



# **Post-legislative Scrutiny of the Flood and Water Management Act 2010**

January 2017



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Presented to Parliament  
by the Secretary of State for Environment, Food and Rural Affairs  
by Command of Her Majesty

January 2017



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# Memorandum to the Environment, Food and Rural Affairs Committee

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# Memorandum to the Environment, Food and Rural Affairs Committee

## Post-legislative Scrutiny of the Flood and Water Management Act 2010

This memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) for submission to the Environment, Food and Rural Affairs Committee (“the Committee”). It is published as part of the process set out in the document Post-Legislative Scrutiny – The Government’s Approach <sup>1</sup>(Cm 7320).

Whilst the memorandum summarises the provisions of the Flood and Water Management Act 2010 (“the Act”) in relation to both England and Wales, it provides the Committee with the Department’s preliminary assessment of the Act as applied to England only. The Welsh Government chose not to contribute to this memorandum.

### 1. Introduction

Government introduced this new legislation on flood and water management to implement recommendations from Sir Michael Pitt’s review<sup>2</sup> following the 2007 floods, and to update the legal framework for water to reflect the vision set out in Future Water<sup>3</sup> and Making Space for Water.

The Draft Flood and Water Management Bill was published for pre-legislative scrutiny by the Committee and public consultation<sup>4</sup> in April 2009. The Committee published its report<sup>5</sup> on 23 September 2009 which included 42 conclusions and recommendations. The Government responded to that Committee report and the public consultation in November 2009<sup>6</sup>. The Bill was then introduced in Parliament on 19 November 2009 and the Act received Royal Assent on 8 April 2010.

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1 <https://www.gov.uk/government/publications/post-legislative-scrutiny-the-governments-approach>

2 [http://webarchive.nationalarchives.gov.uk/20100807034701/http://archive.cabinetoffice.gov.uk/pittreview/thepittreview/final\\_report.html](http://webarchive.nationalarchives.gov.uk/20100807034701/http://archive.cabinetoffice.gov.uk/pittreview/thepittreview/final_report.html)

3 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69346/pb13562-future-water-080204.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69346/pb13562-future-water-080204.pdf)

4 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/229025/7582.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229025/7582.pdf)

5 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmenvfru/555/555i.pdf>

6 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/238519/7741.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/238519/7741.pdf)

## 2. Summary of objectives

Overall the Act provides for better, more comprehensive management of flood risk for people, homes and businesses; helps safeguard community groups from unaffordable rises in surface water drainage charges; supports customers in vulnerable circumstances; and protects water supplies to the consumer.

The Act's aims can be grouped under the three themes of security, service and sustainability:

- greater **security** for people and their property from the risk of flooding and coastal erosion by creating clearer structures and responsibilities for managing that risk, building on the Government's response to Sir Michael Pitt's report following the 2007 floods. It improves local leadership on flood risk, improves management of risk from surface run-off and enables better planning for and prediction and warning of floods. It also introduces modern risk-based approaches to reservoir safety as well as greater security of water supply in the event of water company failure, and improved protection of essential supplies during drought;
- better **service** for people through new ways of delivering major water and sewerage infrastructure projects and improving complaints and enforcement procedures; and
- greater **sustainability** by helping people and their communities adapt to the increasing likelihood of severe weather events due to climate change, encouraging sustainable drainage systems in new developments, protecting communities and the environment better from the risk of flooding, protecting water resources and improving water quality.

### Part 1 – Flood and Coastal Erosion Risk Management

The following are the key objectives of Part 1 of the Act:

#### Local Flood Risk Management

- To improve the management of local flooding and flood risk.

#### Overview of Flood and Coastal Erosion Risk Management

- To provide for the Environment Agency to have a strategic overview of flood management and coastal erosion risk management for all sources of flooding.

#### Flood and Coastal Erosion Risk Management Funding and Levies Provisions

- To provide the Environment Agency and Welsh Ministers with powers to make grants in connection with flood or coastal erosion risk management.

- To provide for the Environment Agency to issue levies to the Lead Local Flood Authority for an area in respect of the Agency's flood and coastal erosion risk management functions in that area.

#### Regional Flood and Coastal Committees (RFCCs)

- To establish Regional Flood and Coastal Committees to ensure an increased focus on local management of risk within the overall national context and more appropriate expenditure of funds overall.

#### Sustainable development

- To ensure that Lead Local Flood Authorities, district councils, internal drainage boards and highways authorities have a similar sustainable development duty as the Environment Agency when exercising a flood risk management function.

#### Designation of Third Party Flood and Coastal Risk Management Assets (features)

- To minimise flood risk by ensuring that assets or features necessary for flood and coastal risk management do not suffer from inappropriate interference and that their function is not compromised.

### **Part 2 – Miscellaneous**

The following are the key objectives of this Part of the Act:

#### Sustainable Drainage

- To increase the uptake of sustainable drainage systems in new developments and redevelopments, wherever possible, by introducing standards for their design, construction, maintenance and operation.

#### Reservoirs

- To provide a high level of protection to the public from the continued operation of reservoirs. Related objectives are to ensure that reservoirs are managed in a way that reflects the risk, to build on the reservoir owners' own incentives to manage this risk and to minimise the subsequent cost to the government, local authorities and the tax-payer in the event of a breach.

#### Amendments to the Special Administration Regime for the water industry

- To improve the special administration regime for water by increasing the options open to the special administrator to bring about a better result for creditors, shareholders or members and ultimately, customers. This means viable water companies that experience short term financial difficulties would be given breathing space to enable them to return to profitability rather than be sold to one or more new owners.

- The regime has also become more flexible, streamlined and consistent with the general insolvency regime and best practice adopted in other sectors.

#### New legislative framework / licensing regime for Large Projects in the water sector

- To confer powers on the Secretary of State to make regulations about large or complex sewerage and water infrastructure projects. The Regulations enable the development of a regime which requires that such specified infrastructure projects are put out to tender with the successful bidder being designated as the infrastructure provider with responsibility for financing, designing, building, owning and operating the project. The infrastructure provider would be granted a project licence and regulated by Ofwat<sup>7</sup>.
- The intended effect is to achieve better value for money for taxpayers and customers for the delivery of large or complex infrastructure projects that water or sewerage undertakers are required to undertake as part of their principal duties under the Water Industry Act 1991 and other investment drivers in the water and sewerage sector. The overall cost of investment paid for by customers in their water bills should be lower, either because of a lower cost of finance, or from greater protection from cost overruns.

#### Water Usage: temporary bans

- To increase the flexibility water companies have under their own powers to reduce demand for water by providing for a wider range of uses that may be prohibited or restricted, rather than relying on powers conferred upon them through drought orders made by the Secretary of State. This will enable companies to impose restrictions with minimal lead in time and so to conserve more water earlier in a drought than had been possible. The powers enable the Secretary of State to add or remove uses of water from the list, or to narrow the scope of the listed uses.

#### Incidental flooding and coastal erosion

- To enable flood and erosion risk management authorities to manage or cause flooding and coastal erosion for the purposes of nature conservation (including conservation of the landscape), preservation of cultural heritage and people's enjoyment of the environment or cultural heritage.

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<sup>7</sup> The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/ 1582) implement this new regime in relation to water and sewerage undertakers whose appointment areas are wholly or mainly in England. To date, this regime has only been used in relation to the Thames Tideway Tunnel.



### Amendment to the Building Act to allow Building Regulations to be made for flood resistant and/or resilient repairs to existing buildings following flooding.

- Building Act powers already allow Building Regulations to be made to require flood resilience/resistance in new buildings/major alterations. This amendment allows provision to be made in respect of repair to existing buildings and ensure that properties would be better able to cope with future flooding.

### Surface Water Drainage Charges

- Enabling water companies to grant concessionary schemes for affected groups when charging for surface water drainage based on the site area size. This should incentivise a more sustainable approach to dealing with surface water runoff whilst considering affordability concerns of specific groups that play a valuable role in the community to ensure they are not threatened with closure.

### Social tariffs

- To enable companies to offer a social tariff that is designed to reduce the charges for individuals who would otherwise have difficulty paying their water bill in full, and may have the effect of introducing a subsidy to such individuals by other persons. There is also a provision to prevent Ofwat rejecting charges schemes on the grounds that it contains a social tariff, whether or not this includes a cross subsidy, and a requirement for Ministers to issue guidance which the companies and Ofwat must have regard.

### Liability for water bill payment

- To ensure that the owners of residential premises which are occupied by someone other than the owner arrange for water and sewerage companies to be given information about the occupiers of their property. This also provides that the occupiers' liability for payment of water and sewerage charges becomes shared (jointly and severally) with the owner if the required information is not provided, and therefore the company may choose to pursue either. Ministers may also issue regulations to cover the necessary information provided by owners and any necessary exemptions.

### Abolition of the Fisheries Committee: Scotland

- To remove unnecessary burdens on hydro-electric developers and generators without compromising the fisheries interests. The Controlled Activities Regulations (CAR) process combined with SEPA's established in-house expertise now provides an adequate safeguard for the water environment including fisheries and therefore the abolition is proportionate to the policy objective.

## **Part 3 – General**

This Part sets out various supplementary provisions which applied generally to the Act.

### **3. Implementation of the Act**

The provisions of the Act were commenced by a series of 12 commencement orders. The first provisions came into force on 1 September 2010 and the last on 1 April 2016. Annex A contains a full list with commencement number, date and summary of what was commenced.

A list of other secondary legislation under the Act is at Annex B. This includes date of issue and headline indication of purpose.

A list of guidance or other documents published in relation to the Act is at Annex C.

To date the following provisions have not been commenced in England:

#### Section 15 - Civil Sanctions for failure to share information

Section 15 gives the Environment Agency and Lead Local Flood Authorities the power to issue enforcement and penalty notices in the event of non-compliance with a request for information made under section 14 of the Act. We have not commenced it because the experience of the Environment Agency and Lead Local Flood Authorities has been that those approached are prepared to share requested information voluntarily. The Environment Agency published Guidance on co-operation and requesting information in July 2011 (see Annex C).

The Government's progress report on the implementation of the Act (December 2012) stated we would keep this under review. We understand from our interactions with Lead Local Flood Authorities and the Environment Agency that there has been an improvement with data and information sharing since the Act. Data sharing agreements have been a way forward where any issues have occurred (for example in relation to confidential information).

#### Schedule 2 – Amendments to the Land Drainage Act 1991

Subparagraph 32(4) and paragraph 42 of Schedule 2 to the Act amend section 23 of the Land Drainage Act 1991 and section 110 of the Water Resources Act 1991, which give powers to ministers to amend the £50 fee for a land drainage or flood defence consent (respectively).

We have not commenced these provisions as the practical effect did not substantially change existing arrangements that amendments to the fee are made by a ministerial order. However, flood defence consents were replaced by flood risk activity permits in April 2016. As a result charging provisions in section 110 of the

Water Resources Act 1991 has been superseded by the Environmental permitting (England and Wales) (Amendment) (No. 2) Regulations 2016.

### Section 32 and Schedule 3: Sustainable Drainage

Stakeholders raised a number of concerns around proposals for implementing Schedule 3, including that housing supply could be negatively impacted.

While implementation of Schedule 3 of the Act remains under review, planning policy has been strengthened from 6 April 2015 to ensure that sustainable drainage systems are provided in new major developments where appropriate, and that clear arrangements are in place for ongoing maintenance over the lifetime of the development. This was announced on 18 December 2014 in a written ministerial statement by the Secretary of State for Communities and Local Government (Column 119WS)<sup>8</sup>. In addition to changes to Planning Practice Guidance<sup>9</sup>, Defra has published non-statutory technical standards for the design, maintenance and operation of sustainable drainage systems to drain surface water<sup>10</sup>, which were developed in discussion with the water sector and house builders. Defra also helped to fund and steer the development of CIRIA's SuDS Manual<sup>11</sup>, which aims to provide comprehensive and practical guidance to water sector professionals on the construction and maintenance of sustainable drainage. CIRIA's Manual highlights the many benefits of sustainable drainage and should help to increase SuDS uptake. The requirement that all new developments in areas at risk of flooding should give priority to sustainable drainage continues to apply. The Department is working with the Department for Communities and Local Government on a review of the planning system in so far as it applies to the provision of sustainable drainage in developments to fulfil the requirement set out in the Housing and Planning Act 2016.

### Section 33 and Schedule 4 – Amendments to the Reservoir Act (1975)

Schedule 4 to the Flood and Water Management Act 2010 inserted section A1 into the Reservoirs Act (1975). The new section was commenced with a transitional provision so that in subsections (3) and (6) of section A1 the figure of "10,000 or more cubic metres" is to be read as "25,000 or more cubic metres" until further

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<sup>8</sup><http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141218/wmstext/141218m0001.htm>

<sup>9</sup><http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-systems-important/>

<sup>10</sup><https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards>

<sup>11</sup>[http://www.ciria.org/Memberships/The\\_SuDs\\_Manual\\_C753\\_Chapters.aspx](http://www.ciria.org/Memberships/The_SuDs_Manual_C753_Chapters.aspx)

provision is made by the Secretary of State through a commencement order. This has the effect that the requirements of the Reservoir Act 1975 still only apply to reservoirs storing an escapable volume greater than 25,000m<sup>3</sup>.

The Department has considered the evidence currently available, including information supplied by the engineering community and others. There are no immediate plans to lower the threshold, because the evidence base does not currently support such a change, however this will be kept under review. Smaller reservoirs generally pose less of a risk than larger reservoirs because they hold less water, although there is evidence that a minority of smaller reservoirs could pose a risk in certain circumstances. The Department has commissioned further research to inform a future decision on whether to regulate smaller reservoirs.

Paragraph 41 of Schedule 4 provides that the Secretary of State must carry out a review of the burden on undertakers in relation to large raised reservoirs of complying with the Reservoirs Act 1975 as amended by the FWMA 2010 and that the review must be carried out at the end of the period of 12 months beginning with the “operative date”. However as section A1 of the Reservoirs Act has not yet been commenced in full and regulations have not yet been made under section 2C(1)(b) of the Reservoirs Act (about specifying conditions for designation as a high-risk reservoir), the operative date has not yet occurred and there is no requirement as yet to conduct the review.

#### Section 34 and Schedule 5: Special Administration

This section and Schedule has been partially commenced. However the Government will not be introducing the necessary secondary legislation needed to underpin the reformed special administration regime until 2017. This is because there have been a number of changes made to the Insolvency Act 1986 that were introduced during the last Parliament which will need to be adopted or modified for the water regime. The Insolvency Service is also consolidating the administration rules in secondary legislation for the wider administration regime. These are expected to come into force later this year and will be adopted and modified for the water regime alongside the reforms introduced by the Act.

The Government is satisfied that the current regime is sufficient to protect the interests of customers should a water company get into financial difficulties before the reforms are adopted. The improvements introduced by the Act and during the last Parliament will streamline the processes and increase options for the special administrator to bring water businesses out of administration.

#### Section 42: Agreements on new drainage systems

A key Government commitment is to reduce unnecessary burdens on business. To date, economic evidence has not been found to make the case that the processes

needed for automatic transfer of new build sewerage pipework from developer to the water company do not place a new regulatory burden on the house building industry. The Government is focussing its attention on encouraging the water and house building sectors to work together on processes to support voluntary adoption arrangements.

#### Section 45 Water and Sewerage Charges: non-owner occupiers

In 2012 the Government consulted on the powers within section 45, setting out two alternative approaches: mandating that landlords provide information on their tenants to water companies or a voluntary approach. The Government also consulted on a draft set of the section 45 regulations that would be required to support the mandatory approach. Respondents to the consultation expressed a strong preference for a voluntary scheme, citing the potential burdens on small and micro businesses that would be imposed under the mandatory approach. Having considered these responses the Government opted for a voluntary approach for landlords in England. In response, the industry, led by Water UK, established a secure data portal for use by landlords in England in December 2014. By contrast, the Welsh Assembly Government has implemented a mandatory approach for landlords in Wales. The Government remains mindful of placing new burdens on businesses, especially the small and micro businesses that represent the majority of landlords. It will continue to keep the introduction of the section 45 regulations in respect of English Landlords under review.

#### Enabling Powers

The following enabling powers have not been used as, unless otherwise stated, they have not been needed so far:

#### Section 5(2)(c): Coastal erosion risk management function

- Power by order to specify further statutory functions to be within the definition of coastal erosion risk management.

#### Section 11(7): Effect of national and local strategies: England

- Power by order to require a specified person to have regard to the strategies and guidance when exercising a statutory function, as defined in subsection (9), which could impact on flood risk or coastal erosion risk in England.

#### Section 28: Power to make further amendments

Power by order to amend various Acts listed if the Minister considers this necessary or desirable in consequence of Part 1 of the Act.

### Section 29: Restructuring

- Power by order to transfer the responsibilities of Lead Local Flood Authorities, district councils and internal drainage boards for flood risk or coastal erosion risk to other risk management authorities or other bodies.

### Section 32 and Schedule 3: Sustainable drainage.

The following powers have not been exercised as Schedule 3 has not so far been commenced.

- Power by order to appoint a body for drainage systems (instead of the approving body specified under subparagraph (1)).
- Power by order to provide:
  - that a specified class of work is to be or not to be treated as construction work
  - for work to be or not to be treated as having drainage implications in specified circumstances and provide exceptions to paragraph 7(1).
- Power to make regulations about timing and procedure for determination of applications for approval.
- Power to make regulations to provide for fees for applications for approval.
- Power by order to provide for the enforcement of the requirement for approval in paragraph 7(1).
- Power by regulations to make provisions for determining when a drainage system, or part of a system, is to be or not to be treated as designated only to provide drainage for a single property.
- Power by order to provide additional exceptions to the adoption duty.
- Power by regulations about the timing and manner of compliance with subparagraph (6).
- Power by regulations to provide a right of appeal against certain decisions.
- Power by regulations requiring a statutory undertaker to notify the approving body before commencing statutory works on public land where the works will or may affect the operation of a drainage system on that land.

## Section 33 and Schedule 4: Reservoirs

The following powers inserted into the Reservoirs Act 1975 have not yet been exercised:

- power to make regulations under section A1(5) to treat small reservoirs in cascade as large raised reservoirs.
- power by order under section A1(7) to substitute a different volume of water for the volume of 10,000 cubic metres specified in section A1(3).
- power by order under section 2A(4) to specify a minimum period within which representations may be made to the EA in response to a provisional designation notice.
- power to make regulations under section 2C(1)(b) to specify conditions for designating a large raised reservoir as high risk.

## Section 45: Water and sewerage charges: non-owner occupiers

- Power to make regulations, inserted into section 144C of the Water Industry Act 1991, to require landlords to provide certain information on their tenants or become liable for unpaid water bills.

## **4. Legal Issues**

There have been no specific legal or drafting difficulties which have been matters of public concern (e.g. issues subject to litigation in the courts or comment from Parliamentary committees).

## **5. Other reviews**

### 5.1 Parliamentary reviews

#### EFRA

In September 2010 the Committee undertook an inquiry to assess progress on flooding and water management policy.

It published its report<sup>12</sup> in December 2010. The Government response<sup>13</sup> was published in April 2011.

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<sup>12</sup> <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenvfru/522/522.pdf>

<sup>13</sup> <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenvfru/922/922.pdf>

## Public Accounts Committee

In January 2012 the House of Commons Committee of Public Accounts (“the PAC”) published a report on Flood Risk Management in England<sup>14</sup>. This report was not specifically related to the Act but did cover local flood risk management strategies. The Government published its response<sup>15</sup> in the HM Treasury minute in March 2012.

In November 2014 the PAC held an inquiry into strategic flood risk management. The report<sup>16</sup> was published in March 2015. This inquiry was not specifically related to the Act but did cover the Lead Local Flood Authority duty to develop, maintain, monitor and apply a local flood risk management strategy. The Government provided a response in the HM Treasury minute<sup>17</sup> published in July 2015.

## Environmental Audit Committee

The Environmental Audit Committee began an inquiry in July 2014 into the progress of preparations in England for adapting to the impact of climate change. It reported<sup>18</sup> in March 2015 and the Government response<sup>19</sup> was published in November 2015. Whilst this inquiry was in relation to climate change adaptation there were several recommendations with relevance to the Act.

## 5.2 Reviews by other bodies

### National Audit Office

In November 2014 the National Audit Office published a report on the Department for Environment, Food and Rural Affairs – Strategic Flood Risk Management<sup>20</sup>. The report was not specifically related to the Act but did cover the Lead Local Flood Authority duty to develop, maintain, apply and monitor a local flood risk management strategy.

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<sup>14</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpublicacc/1659/1659.pdf>

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236076/8335.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236076/8335.pdf)

<sup>16</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpublicacc/737/737.pdf>

<sup>17</sup> <https://www.gov.uk/government/publications/treasury-minutes-july-2015>

<sup>18</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvaud/453/453.pdf>

<sup>19</sup> <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmenvaud/590/59004.htm>

<sup>20</sup> <https://www.nao.org.uk/wp-content/uploads/2014/11/Strategic-flood-risk-management.pdf>



## The Committee on Climate Change

The Committee on Climate Change (CCC) published its 2015 Progress Report<sup>21</sup> to Parliament in June 2015. The report was not specifically related to the Act but did look at some issues in relation to local flood risk management.

### 5.3 Government reviews and research

#### Building Act 1984 Review

In 2011 the Department for Communities and Local Government reviewed whether there was a case for incorporating consideration of flooding within the Building Regulations. This was in response to continuing calls for regulation in this area and the recommendation in the Pitt Review Report that Building Regulations should be revised to ensure that all new or refurbished buildings in areas of high flood-risk are flood resistant or resilient.

The Department for Communities and Local Government published a consultation in January 2012 on changes to Building Regulations where it reported on this review and concluded that there remained opportunities to better promote the voluntary take-up of such measures and, therefore, the immediate focus should be on raising awareness and information sharing. To support this the Department for Communities and Local Government updated Approved Document C *Site preparation and resistance to contaminants and moisture* i.e. practical guidance published by Government about how to meet the requirements of Part C of schedule 1 to the Building Regulations.

The Department for Communities and Local Government continues to keep this issue under review.

#### Water Usage: temporary bans

Powers under section 36 (water use: temporary bans) were first used in the 2010-12 drought with seven water companies putting in place temporary use bans taking a co-ordinated approach to the way in which bans were to be implemented and to the exclusions they allowed. The Consumer Council for Water conducted research on the water companies' use of the powers at the end of the drought which suggested that people understood and generally accepted the need to impose restrictions. This support from the public could have been partly because the impact was limited and the weather soon became wetter and cooler than normal. This wet weather limited more thorough assessments of effectiveness of the powers.

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<sup>21</sup> <https://www.theccc.org.uk/publication/reducing-emissions-and-preparing-for-climate-change-2015-progress-report-to-parliament/>

### Evaluation into the arrangements for managing local flood risk

In July 2014 the Department commissioned CAG Consultants to undertake an independent evaluation into the arrangements for managing local flood risk in England (“the evaluation”). This evaluation has now been [published](#).

### Local flood risk management Action Plan

Following a recommendation by the Committee on Climate Change in its progress report to Parliament in June 2015, the Department has worked with local authority and Environment Agency representatives to develop an action plan to improve local flood risk management. The action plan is published as Annex D to this memorandum.

### Review of section 19 flood investigation reports

In 2015 the Department commissioned a scoping review of Lead Local Flood Authority investigations of flooding events undertaken and published as required by section 19 of the Act. The aim was to assess the principal factors contributing to flooding from surface water in England and Wales since 2010, and how prevalent they are. The review report<sup>22</sup> was published in November 2015.

## 5.6 Future statutory reviews

The following pieces of secondary legislation have statutory review clauses.

- The Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011.
- The Designation of Features (Appeals) (England) Regulations 2012.
- The Designation of Features (Notices) (England) Regulations 2012.
- The Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (England) Regulations 2013.
- The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc.) (England) Regulations 2013.
- The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013.

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<sup>22</sup><http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=19252&FromSearch=Y&Publisher=1&SearchText=FD2692&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>

## **6. Preliminary assessment of the Act**

The Act has been in force for six years with various provisions being gradually introduced (and some provisions which have not yet been commenced, as explained in section 3 above). Whilst it was always anticipated that the full objectives of this Act would be achieved over a considerably longer timeframe than six years, significant progress has been made.

Our preliminary assessment of how the Act has worked in practice is as follows.

### Part 1 - Flood and coastal erosion risk management

The Department believes that the Act has been a big step forward in managing flood risk, clarifying roles and responsibilities of different organisations and addressing the deficiencies identified by the Pitt Review, specifically in relation to managing local flood risk.

#### *Local flood risk management*

The Act created the Lead Local Flood Authorities (LLFAs) role in managing local flood risk. The Department believes that the Act has led to an overall improvement in the strategic management of local flood risk, and a strengthening of the structures, systems and processes for managing local flood risk.

The Department believes that most LLFAs are demonstrating leadership in the management of local flood risks for example in terms of co-ordination, engagement, setting out a vision, developing projects and co-ordinating responses to flood events.

However, the level of improvement varies by area and some LLFAs have yet to fully deliver their statutory responsibilities. As LLFAs mature in their role, increase their understanding of the flood risk in their area, and continue working in partnership, we would expect this improvement to continue.

One key statutory responsibility is for LLFAs to agree, publish and implement a local flood risk management strategy. Progress in producing these strategies has been slower than anticipated, however at 31 March 2016, 114 out of the 152 LLFAs in England had completed and published their strategy, 26 were carrying out public consultation on a draft and only 12 had not yet reached consultation stage. For those LLFAs that have not completed their strategy by 31 March 2017 the Department will consider using its statutory powers to instruct another risk management authority to complete it. The Environment Agency and Defra will also be seeking to agree with DCLG a new measure to demonstrate the ongoing maintenance and development of high quality LLFA strategies for the management of local flood risk from April 2017. This would replace the current measure which records whether strategies are complete or not.

The Act also requires LLFAs to investigate flooding in their areas, publish results of their investigations and notify other relevant risk management authorities about them. The Department believes that as a result of the Act, most floods regarded as significant by LLFAs are now investigated.

#### *Environment Agency strategic overview*

The Environment Agency (EA) has been providing a strategic overview of flood risk management and coastal erosion risk management. The EA works to build close relationships locally with LLFAs and other risk management authorities to reach common understanding or resolve issues relating to any aspect to flood and coastal risk management, including strategies, plans or actions.

The EA published a national flood and coastal erosion risk management strategy<sup>23</sup> in 2011 and reports<sup>24</sup> to Department Ministers every year about the application of the strategy and on the activities of risk management authorities. These reports are published and contain information relevant to the implementation of the Act. For example they monitor the progress of Lead Local Flood Authorities in producing their local flood risk management strategies, asset registers and the amount of flood investigations they have undertaken and reports published. The reports also contain case studies and examples of where risk management authorities have worked in partnership on specific projects and on the levels of investment and funding by both Government and risk management authorities as well information on regulating reservoirs.

This strategic overview is vital in drawing all elements of flood and erosion risk together. Significant progress has been made since the implementation of the Act, though understanding of some risks remains more advanced than others. For example understanding of modelling surface and groundwater risks, and coastal erosion risk are less advanced than understanding of flooding from rivers.

#### *Regional Flood and Coastal Committees*

Since 2011 the Environment Agency has established 12 Regional Flood and Coastal Committees (RFCCs) in England which replaced the Regional Flood Defence Committees. The RFCCs have been providing oversight of the Environment Agency's Flood and Coastal Erosion risk management (FCERM) functions. RFCCs have a key role in balancing local priorities and making sure that investment is co-

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<sup>23</sup> <https://www.gov.uk/government/publications/national-flood-and-coastal-erosion-risk-management-strategy-for-england>

<sup>24</sup> <https://www.gov.uk/government/publications/managing-flood-and-coastal-erosion-risk-april-2014-to-march-2015>

ordinated at the catchment and shoreline scale and in promoting the consideration of climate change impacts in local decision making.

The Act extended the powers of the RFCCs and the Environment Agency to cover coastal erosion as well as coastal flooding. The Environment Agency National Strategy and annual report about its application includes the latest information on coastal erosion management activities. Coastal Groups bring together local authorities, the EA, RFCCs and other Risk Management Authorities to develop and oversee the implementation of Shoreline management plan in their respective areas. SMPs make an assessment of the risks associated with their stretch of coast and identify the most sustainable approaches to managing flood and coastal risk for those coastlines. SMPs continue to guide long term coastal management and planning across England. The Environment Agency has been conducting a review of Coastal Groups and in 2016/17 are reviewing their Terms of Reference to ensure they remain fit for purpose. The Environment Agency administers the Coastal Erosion Assistance Grant, which provides a potential £60,000 per year towards local authority costs to remove properties at imminent risk from erosion.

## Part 2 – Miscellaneous

This section covers the provisions which have been implemented. Some of the Act's provisions on civil sanctions, land drainage charges, sustainable drainage, reservoirs, special administration, agreements on new drainage systems and water and sewerage charges have not been fully commenced for the reasons set out in section 3 above.

### *Reservoirs*

One of the objectives under this part of the Act is to provide a high level of protection to the public from the continued operation of high risk large raised reservoirs and to provide for a risk-based approach to reservoir safety. Whilst some of the reservoir provisions have not yet been commenced (see part 3 on implementation of the Act) the Environment Agency has undertaken a risk designation process and expects that around 10% of large raised reservoirs will not be designated as high risk and will therefore not be subjected to full regulation.

The Environment Agency publishes a biennial report on regulatory and operational activities under the reservoirs Act. The last report for 2013 to 2014 was published in May 2015.

### *Water management*

In relation to water management, this part of the Act allows for regulations to regulate the provision of infrastructure by a third party for the eventual use by water

companies. These infrastructure providers are regulated by Ofwat to finance and deliver large or complex high-risk projects. These regulations<sup>25</sup> were made in 2013 (and updated in 2015 and 2016) and have been used to specify the Thames Tideway Tunnel project in London. The Thames Tideway Tunnel is a major new sewer, urgently needed to protect the tidal River Thames from pollution. The new sewer will be operational from 2023.

The Act has also broadened water companies' powers to temporarily prohibit or restrict specific uses of water if it thinks that it is experiencing, or may experience, a serious shortage of water for distribution. The Act updated powers originally enacted in 1945 by extending the scope of them and reflecting contemporary discretionary uses of water. These revised powers were used at the end of the 2010-12 drought by seven water companies

It has also enabled water companies to issue concessionary schemes on surface water charges of community groups that provide a public benefit. Following the introduction of site area charging for surface water drainage (by four water companies) some groups noticed an increase to their water bill – noticeably those with small incomes and large premises. To mitigate this the Government issued statutory guidance (in 2010) to the water companies. This guidance has helped reduce the water bills of certain community groups.

The Act has enabled all water companies to include a social tariff in its charges scheme which is designed to reduce charges for those who would otherwise have difficulty paying their water bills. This also allows for such social tariffs to be funded by cross subsidy from other customers. To support these social tariffs the Government issued (in 2012) statutory guidance to Ofwat and the water companies. By 2017 all water companies will have a social tariff in place to help support customers.

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<sup>25</sup> <http://www.legislation.gov.uk/uksi/2013/1582/contents/made>

## Annex A Commencement Orders

SI	Title	Summary
2010/2169  Made 31 August 2010	The Flood and Water Management Act 2010 (Commencement No.1 and Transitional Provisions) Order 2010	<ul style="list-style-type: none"> <li>Sept 2010 – Some definitions come into force so far as to enable Ministers to make orders relating to flood risk management functions and temporary hosepipe bans.</li> <li>October 2010 - the implementation of various provisions including definitions in part 1, a duty on Lead Local Flood Authorities (LLFAs) to develop local flood strategies and a duty of the Environment Agency (EA) to develop a national flood and coastal erosion risk management strategy and grants.</li> </ul>
2011/95 (C.4)  Made 18 January 2011	The Flood and Water Management Act 2010 (Commencement No.2) Order 2011	<ul style="list-style-type: none"> <li>January 2011 – Order making powers under sections, 15 (Civil Sanctions), 38 and 39 (Incidental Flooding).</li> </ul>
2011/694 (C.25)  Made 7 March 2011	The Flood and Water Management Act 2010 (Commencement No.3 and Transitional Provisions) Order 2011	<ul style="list-style-type: none"> <li>April 2011 - responsibilities to LLFAs to investigate flooding, maintain a register of structures or features, which are likely to have a significant effect on a flood risk in its area. Powers to request information and designation of features. Issue of Levies and some provisions relating to establishment of Regional Flood and Coastal Committees. Also commenced were a small number of provisions within Schedule 2, which made consequential amendments to other Acts in respect of modifying existing functions carried out by local authorities, IDBs and Regional Flood Defence Committees. Civil Sanctions in Wales.</li> </ul>

<p>2011/1770 (C.67)</p> <p>Made 18 July 2011</p>	<p>The Flood and Water Management Act 2010 (Commencement No.1 and Transitional Provisions) (England) Order 2011</p> <p>[England only]</p>	<ul style="list-style-type: none"> <li>• New powers and duties on national and local strategies and reporting on flood and coastal erosion risk management were commenced. Certain roles and responsibilities under the Coast Protection Act 1949, Land Drainage Act 1991, and Water Resources Act 1991 were amended.</li> </ul>
<p>2011/2204 (C.80)</p> <p>Made 5 September 2011</p>	<p>The Flood and Water Management Act 2010 (Commencement No.4 and Transitional Provisions) Order 2011</p>	<ul style="list-style-type: none"> <li>• October 2011 – provided the legal basis for the development of proposals for the implementation of Section 33, Schedule 4 of the Act (reservoir safety) and commenced Section 44 (water company social tariffs). Sustainable development guidance for flood risk authorities (Section 27) was also published.</li> <li>• The commencement order also commences definitions and statutory instrument making powers in Schedule 4 related to the introduction of a risk-based approach to reservoir safety.</li> <li>• It also commences section 44 – which allows water companies to devise company social tariffs to reduce charges for individuals who would have difficulty paying in full.</li> <li>• November 2011- Wales only a requirement for Welsh risk management authorities to act in a manner consistent with the national strategy for Wales was commenced, along with a requirement for the Environment Agency to report to the Minister about flood and coastal erosion risk management within Wales.</li> </ul>
<p>2011/2856 (C.101)</p> <p>Made 28 November 2011</p>	<p>The Flood and Water Management Act 2010 (Commencement No.5 and Transitional Provisions) Order 2011</p>	<ul style="list-style-type: none"> <li>• December 2011 - powers to allow the Environment Agency and Local Authorities to carry out works in respect of flooding or coastal erosion for nature conservation and preservation of cultural heritage were commenced (section 38 &amp; 39) if certain conditions satisfied.</li> </ul>



<p>2012/879 (C.25)</p> <p>Made 19 March 2012</p>	<p>The Flood and Water Management Act 2010</p> <p>(Commencement No.6 and Transitional Provisions) Order 2012</p>	<ul style="list-style-type: none"> <li>April 2012 - the transfer of responsibility from the Environment Agency for the issuing of flood defence consents under section 23 of the Land Drainage Act 1991 (LDA) to Lead Local Flood Authorities (LLFAs). Also from 6 April 2012, Internal Drainage Boards hold the powers in section 25 of the LDA (Powers to require works to maintain a proper flow of water in ordinary watercourses) in internal drainage districts, and LLFAs will hold those powers outside those districts.</li> </ul>
<p>2012/2000 (C.79)</p> <p>Made 30 July 2012</p>	<p>The Flood and Water Management Act 2010</p> <p>(Commencement No.7 and Transitional Provisions) Order 2012</p>	<ul style="list-style-type: none"> <li>August 2012 - the remaining provisions under Section 30 of and Schedule 1 to the Act (Designation of Features) came into force, along with Appeals and Notice Regulations. These provisions allow the Environment Agency, local authorities (LLFAs or District Councils) and internal drainage boards in England and Wales to formally designate structures or features which affect flood or coastal erosion risk. This makes it a requirement of the owner of a designated structure or feature to seek consent from the relevant authority before altering, removing or replacing it</li> </ul>
<p>2012/2048 (W. 239) (C. 81)</p> <p>Made 6 August 2012</p>	<p>The Flood and Water Management Act 2010</p> <p>(Commencement No.8 and Transitional Provisions) Order 2012</p> <p>[Wales Only]</p>	<ul style="list-style-type: none"> <li>Commencement of section 42 (<i>Arrangements on new drainage systems</i>), to the extent not already commenced, comes into force on 1 October 2012 in relation to sewerage undertakers whose areas are wholly or mainly in Wales.</li> </ul>

<p>2013/1590 (C.64)</p> <p>Made 3 July 2013</p>	<p>The Flood and Water Management Act 2010 (Commencement No.2 and Transitional and Savings Provisions) Order 2013</p> <p>[England only]</p>	<ul style="list-style-type: none"> <li>July 2013 – Amends the Reservoirs Act 1975 in relation to England to introduce a new legal framework relating to the safety of large raised reservoirs.</li> <li>The final elements of phase 1 implementation of amendments to the Reservoirs Act 1975 (RA75) by Schedule 4 of the Flood and Water Management Act 2010 came into force on 30 July 2013</li> </ul>
<p>2014/3155 (W. 317) (C. 137)</p> <p>Made 2 December 2014</p>	<p>The Flood and Water Management Act 2010 (Commencement No.9) Order 2014</p> <p>[Wales only]</p>	<ul style="list-style-type: none"> <li>Commencement of section 45 (<i>Water and sewerage charges: non-owner occupiers</i>), to the extent not already commenced, comes into force on 1 January 2015 in relation to an undertaker whose area is wholly or mainly in Wales.</li> </ul>
<p>2016 No. 79 (W. 36) (C. 6)</p> <p>Made 26 January 2016</p>	<p>The Flood and Water Management Act 2010 (Commencement No. 1 and Transitional Provisions) (Wales) Order 2016</p> <p>[Wales Only]</p>	<ul style="list-style-type: none"> <li>Commencement of section 33 (Reservoirs) to the extent not already commenced, comes into force on 1 April 2016 in relation to an undertaker whose area is wholly or mainly in Wales.</li> </ul>

## Annex B Secondary legislation

SI	Date in force	Title	Summary
2010/2232	01/10/2010	<b>Section 4(2)(f) Flood risk Management Function</b>  The Flood Risk Management Functions Order 2010	October 2010 - Direction given to include Flood Risk Regulations 2009 as flood risk management function and sewer undertaker under s94 of Water Industry Act 1991 (except for purposes of s20 FWMA).
2011/697	06/04/2011	<b>S. 31/Sch 2 (para 54) Amendment of other Acts Regulations</b>  The Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011  (in relation to England only)	The Regulations relate to the duty of a risk management authority under section 21F(3) of the Local Government Act 2000 (c. 22) to comply with any request made by an overview and scrutiny committee for information or a response to a report.
2011/695	01/04/2011	<b>22 – RFCC Establishment Regulations</b>  The Regional Flood and Coastal Committees (England and Wales) Regulations 2011	The regulations make provision for the procedure to be followed by the Environment Agency when dividing England and Wales into regions under section 22(1)(a) of the 2010 Act, and when establishing Regional Flood and Coastal Committees under sections 22(1)(b) and (c) of that Act. They also make provision for the composition of Committees, the method of appointment for members, holding office, proceedings and transitional arrangements (24).
2011/696	01/04/2011	<b>17 – Levies Regulations:</b>  The Environment Agency (Levies) (England and Wales) Regulations 2011	The Regulations are made under sections 74 and 143(1) and (2) of the Local Government Finance Act 1988. They provide for the issue of levies by the Environment Agency to Lead Local Flood Authorities under section 17(1) and (2) of the Flood & Water Management Act 2010 in respect of the Agency's flood and coastal erosion risk management functions.

2011/865 (W.127)	06/04/2011	<b>Civil Sanctions Regulations</b>  The Flood and Coastal Erosion Risk Management Information Appeal (Wales) Regulations 2011  (in relation to Wales only)	Provide a right of appeal against penalties imposed under section 15 of the Flood and Water Management Act 2010.
2011/2829 (W.302)	01/12/2011	<b>38 and 39 Incidental Flooding</b>  The Incidental Flooding and Coastal Erosion (Wales) Order 2011	Applies the relevant provisions of the Water Resources Act 1991 (c. 57) relating to compulsory purchase, powers of entry, and compensation to the exercise of the powers under sections 38 and 39. It also modifies the application of those provisions for the purposes of section 38 in relation to the Environment Agency and compulsory purchase and the Environment Agency and local authorities in relation to exercising the powers of entry in relation to agricultural land
2011/2855	01/12/2011	<b>38 and 39 Incidental Flooding</b>  The Incidental Flooding and Coastal Erosion (England) Order 2011	Applies the relevant provisions of the Water Resources Act 1991 (c. 57) relating to compulsory purchase, powers of entry, and compensation to the exercise of the powers under sections 38 and 39. It also modifies the application of those provisions for the purposes of section 38 in relation to the Environment Agency and compulsory purchase and the Environment Agency and local authorities in relation to exercising the powers of entry in relation to agricultural land.
2012/1945 (W.228)	23/07/2012	<b>30/ Sch 1: Designation of features Regulations</b>  The Designation of Features (Appeals) (England) Regulations 2012	The Minister is obliged under paragraph 15 of Schedule 1 of the Act to provide, by regulations, the right to an appeal for landowners affected by decisions taken by operating authorities to protect third party assets.

2012/1819 (W.228)	11/07/2012	<b>30/ Sch 1: Designation of features Regulations</b>  Designation of Features (Appeals) (Wales) Regulations 2012	The Minister is obliged under paragraph 15 of Schedule 1 of the Act to provide, by regulations, the right to an appeal for landowners affected by decisions taken by operating authorities to protect third party assets.
2012/1693	25/07/2012	<b>30/ Sch 1: Designation of features Regulations</b>  The Designation of Features (Notices) (England) Regulations 2012	The Notice Regulations provide a requirement for all 'proactive consent decision' notices issued under paragraph 6(3) (b) of Schedule 1 to specify a minimum notice period of 28 days before they have effect.
2012/1692 (W.218)	20/07/2012	<b>30/Sch 1: Designation of features Regulations</b>  The Designation of Features (Notices) (Wales) Regulations 2012	The Notice Regulations provide a requirement for all 'proactive consent decision' notices issued under paragraph 6(3) (b) of Schedule 1 to specify a minimum notice period of 28 days before they have effect.
2013/1896	27/07/2013	<b>S33/Schedule 4 Reservoirs Regulations: The Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (England) Regulations 2013</b>	This introduces new regulations for exemptions from RA75, rights of appeal, and updated inspection requirements.
2013/1677	30/07/2013	<b>S33/Schedule 4 Reservoirs Regulations: The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc.) (England) Regulations 2013</b>	This introduces new regulations for the calculation of capacity of a large raised reservoir (LRR), the registration of a LRR, and the reporting of incidents at a LRR. It updates regulations on information to be registered, prescribed information, reporting by the Environment Agency to the Secretary of State, and various prescribed forms.
2013/1676	30/07/2013	<b>S33/Schedule 4 Reservoirs Regulations: The Reservoirs Act 1975 (Referees) (Appointment, Procedure and Costs) (England) Rules 2013</b>	This updates and amends the previous referee rules.

2013/1582	28/06/2013	<b>34: Specified Infrastructure Project Regulations</b>  The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013	These Regulations apply to large or complex water or sewerage projects such as the Thames Tideway Tunnel where their application are considered to result in better value for money for both customers and taxpayers.
2015/22	10/01/2015	<b>34: Specified Infrastructure Project Regulations</b>  The Water Industry (Specified Infrastructure Projects)(English Undertakers)(Amendment) Regulations 2015	Amend Schedule 1 to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013
2016/78(W.35)	27/01/2016	<b>The Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (Wales) Regulations 2016</b>	Regulates: <ul style="list-style-type: none"> <li>- Definitions of things not to be treated as large raised reservoirs;</li> <li>- A right of appeal against designations of high risk reservoirs;</li> <li>- A right of appeal against notices given by NRW;</li> <li>- The timing of inspections.</li> </ul>
2016/80(W.37)	27/01/2016	<b>The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc) (Wales) Regulations 2016</b>	Regulates: <ul style="list-style-type: none"> <li>- Calculating capacity;</li> <li>- Registering required information;</li> <li>- Required reports;</li> <li>- Recording required information for a high risk reservoir;</li> <li>- Certification forms;</li> <li>- Required information for constructing or bringing a large raised reservoir back into use;</li> <li>- Reports into uncontrolled release.</li> </ul>

## Annex C Guidance published under the Act

Section / Schedule	Publication Date	Details
S. 7 (5 & 6): National flood and coastal erosion risk management strategy: England (in relation to England only)	01/10/2010	National Flood and Coastal Erosion Risk Management Strategy for England  <a href="#">Published by the Environment Agency</a>
S. 8 (5 & 6): National flood and coastal erosion risk management strategy: Wales (in relation to Wales only)	14/11/2011	National Strategy for Flood and Coastal Erosion Risk Management in Wales.  <a href="#">Published by the Welsh Government</a>
S. 13(1): Co-operation and arrangements and 14: Power to request information (in relation to England only)	18/07/2011	Guidance on co-operation and requesting information in flood and coastal erosion risk management.  <a href="#">Published by Defra and Environment Agency</a>
S. 18 Environment Agency reports	Nov 2012 & July 2013, Sept 2014 and July 2015	Managing flood and coastal erosion risk in England published by the <a href="#">Environment Agency</a>
S. 27: Sustainable development	01/10/2011	The Minister is required to issue guidance on how the specified authorities should contribute to the achievement of sustainable development through their flood or erosion risk management functions.  Published by Defra - <a href="#">PB13640</a>
S. 30/ Sch. 1: Designation of features	21/06/2012	Information note - sets out recommendations on the practical considerations for designating and responsible authorities to enable designations to be made.  Published by Defra - <a href="#">PB13804</a>
S. 30/ Sch. 1: Designation of features	21/06/2012	Questions and answers - for asset owners.  Published by Defra - <a href="#">PB13746</a>

Section / Schedule	Publication Date	Details
S. 43: Drainage: concessionary charges for community groups  [England only]	01/12/2010	Concessionary charges for community groups - Guidance issued by the Minister, which the Water Services Regulation Authority (Ofwat) and undertakers have regard to.
S. 44. Company Social Tariffs	21/06/2012 for England  10/06/2014 for Wales	Guidance to water and sewerage undertakers and the Water Services Regulation Authority under Section 44 of the Flood and Water Management Act 2010  Published by Defra - <a href="#">PB13787</a>  Published by Welsh Government - <a href="#">WG16024</a>



## Annex D Local Flood Risk Management Action Plan

- The Committee on Climate Change (CCC) published its 2015 Progress Report to Parliament in June 2015. It made a recommendation that Defra should work with local government representatives to improve local flood risk management arrangements and there should be an action plan to tackle surface water flood risk, to be published by Defra within one year of the report. Local flood risk – that is, risk from surface water, groundwater and ‘ordinary watercourses’ - is managed by Lead Local Flood Authorities (LLFAs).
- We have identified the following key areas for improvements in the management of local flood risk: delivery and partnership working, skills and capacity, investment and infrastructure, community resilience and emergency response

### 1. Improving delivery and partnership working

- In order to bring all Lead Local Flood Authorities up to the standard that a number of LLFAs are working to, the Environment Agency will **promote stronger partnership working** between LLFAs and other Risk Management Authorities, and in particular facilitate the strengthening of catchment-level partnerships in line with the objectives of a more integrated approach to catchment management, for example through sharing best practice and the promotion of Public Sector Co-operation Agreements.
- As part of its Strategic Overview role, the Environment Agency and Defra to agree with DCLG a new measure to demonstrate the ongoing maintenance and development of high quality LLFA strategies for the management of local flood risk from April 2017. This would replace the current measure which records whether strategies are complete or not. The EA will report on this new measure in its annual report ‘Managing flood and coastal erosion risks in England’ for the 2017/18 year.
- Where LLFAs have not completed their strategies by 31 March 2017, in consultation with DCLG the Secretary of State will consider using existing powers within the Flood and Water Management Act to instruct another Risk Management Authority to complete it. This power could also be exercised in relation to the duty to complete a risk register in the highest risk areas.
- Regional Flood and Coastal Committees to support the Environment Agency by seeking regular reports from members to allow them to review progress in managing local flood risks and support future priorities.

### 2. Improving skills and capacity

Although capability in the sector has improved overall, there is an ongoing need for activity to develop skills and capacity at local level.

- The Environment Agency to advise and support the local government sector to identify Local Authorities in need of priority support (e.g. due to staff turnover) and support them to understand the risk and **develop capability-building plans**.
- Defra and the Environment Agency to work with the local government sector to review and refresh the **online resources** available to support local flood and coastal risk management by winter 2016.
- Local government organisation the Association of Directors of Environment, Economy, Planning and Transport (**ADEPT**) to develop systems to **enable skills sharing and mutual support** between Authorities, including in an emergency, to be hosted on an existing platform such as FlowNet.
- Environment Agency to work with local authorities to promote data sets being released through the #opendefra programme to **help support their knowledge and evidence base**.

### 3. Promoting investment and infrastructure

- **Support for smaller projects:** The Environment Agency to work with Regional Flood and Coastal Committees and the local government sector to promote the simpler short form application process for grant funding small-scale infrastructure projects.
- Defra and the Environment Agency to share good practice identified through the small-scheme pathfinder projects by March 2017 to support LLFAs in making grant applications.
- Defra and the Environment Agency to work with local government sector to consider whether there are possible lessons for the funding of small-scale capital works to be learned from Department for Transport and the funding of highways infrastructure.
- The Environment Agency to work with RFCCs to explore what support LLFAs need to develop proposals for flood risk schemes with wider environmental benefits, for example small-scale natural flood risk management.
- **Joined-up planning** LLFAs that wish to apply for grant funding from the Environment Agency will have to demonstrate that the planned measures are supported by evidence in their Local Flood Risk Management Strategy or associated action plan from 2018.
- Defra to work with DCLG and key stakeholders including Local Government bodies on a review of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the

development of land in England, following the Government commitment contained in the Housing and Planning Act 2016.

#### **4. Community Resilience**

- Defra and the National Flood Forum to create a community resilience 'resource hub' to make available the outputs of the **community resilience pathfinders** to support local authorities.
- EA to refresh and extend their annual 'Floods Destroy. Be Prepared' campaign to increase awareness of flood risk among priority audiences and motivate people to take action.
- Environment Agency to work to with the business sector, including through the Business Emergency Resilience Group (BERG), to help businesses to become more resilient to flooding, and to explore the role they can play in community preparedness, response and recovery.

#### **5. Emergency response**

- Defra to update its guidance to emergency planners to help clarify the roles and responsibilities of Local Authorities in an incident and to consider how it can be used to help encourage links between LLFAs and Local Resilience Forums.

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